

EXHIBIT 9

Duarte, Charles - Vol. I

November 15, 2005

Carson City, NV

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

-oOo-

In Re: PHARMACEUTICAL

INDUSTRY AVERAGE WHOLESALE

PRICE LITIGATION

CERTIFIED COPY

MDL DOCKET NO.

CIVIL ACTION

01CV12257-PBS

THIS DOCUMENT RELATES TO:

ALL ACTIONS

VOLUME I

DEPOSITION OF CHARLES DUARTE

NOVEMBER 15, 2005

CARSON CITY, NEVADA

REPORTED BY: STEPHANIE ZOLKOWSKI CCR 283

COMPUTER-ASSISTED TRANSCRIPTION BY: caseCATalyst

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1 to reimburse them.

2 **Q Did either of these cases go to trial?**

3 A Not to my knowledge. I left the State before
4 either of them may have gone to trial. I wasn't sure
5 of their final outcomes.

6 **Q Have you ever testified at a trial before?**

7 A No, I have not.

8 **Q Have you ever provided legislative hearing**
9 **testimony?**

10 A Yes.

11 On a few occasions.

12 **Q What types of issues have you testified about**
13 **before the legislature?**

14 A Issues related to Medicaid and the other
15 program that I administered, the Nevada Check Up
16 Program, which is a State children's health insurance
17 program for the State of Nevada.

18 **Q Have you ever testified with respect to drug**
19 **reimbursement or drug rebate issues?**

20 A Yes.

21 **Q What sort of testimony have you provided with**
22 **respect to those issues?**

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1 A Briefly described initiatives to increase
2 rebates and/or contain costs.

3 Q Let's start with the initiatives to contain
4 costs.

5 How many times have you testified before the
6 legislature on initiatives to contain costs?

7 A I don't know the exact number. Numerous
8 occasions over the last five years where I've done so.

9 Q Did you provide any legislative hearing
10 testimony while you were a Medicaid Director in
11 Hawaii?

12 A Yes.

13 Q Did you testify in Hawaii also about
14 containing Medicaid costs?

15 A Yes.

16 Q Did you testify in Hawaii also about
17 containing the cost of prescription drugs?

18 A Not specifically to my recollection.

19 Q On how many occasions have you testified
20 regarding initiatives to increase rebates for
21 prescription drugs?

22 A I don't know the exact number. But perhaps

1 two or three.

2 Q And are those instances where you've
3 testified regarding rebates, those also occurred here
4 in Nevada?

5 A Yes.

6 Q Have you ever worked on preparing legislative
7 testimony for someone else with regard to prescription
8 drug reimbursement issues?

9 A Yes.

10 Q Would you please describe your efforts in
11 that area.

12 A I prepared testimony which discussed
13 primarily our cost saving initiatives in the Medicaid
14 pharmacy area and prepared testimony along that line.

15 Q Who actually gave that testimony before the
16 legislature?

17 A My boss, the Director of the Department of
18 Health and Human Services. His name is Michael
19 Wilden.

20 Q Have you ever provided testimony before the
21 legislature in connection specifically with AWP?

22 A Not to my recollection.

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1 Could I clarify that?

2 **Q Sure.**

3 A Only in the context that it was a part of the
4 overall discussion of cost containment. The term was
5 used but the purpose of the testimony was not
6 specifically to discuss AWP.

7 **Q Would this have been in connection with the**
8 **State's change in its definition of estimated**
9 **acquisition costs from AWP minus 10 percent to AWP**
10 **minus 15 percent?**

11 A Yes.

12 In other context as well.

13 **Q What other context?**

14 A In terms of what we actually pay pharmacies
15 and how we do that. On several occasions I have to
16 describe and redescribe to different legislative
17 bodies.

18 **Q You say you need to describe to different**
19 **legislative bodies.**

20 What legislative bodies have you testified
21 before?

22 A In this context?

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1 **Q** In this context. Yes.

2 A Let's see. There's a standing committee of
3 the legislature during the interim session called the
4 Legislative Committee on Health Care. There is or was
5 a standing committee in the 2002, excuse me, 2002-
6 2003, called the Committee on Persons With
7 Disabilities. There is a standing interim body of the
8 legislature called Interim Finance Committee.

9 And it may have been discussed, although, I
10 can't recall specifically, in the Standing Committee,
11 I'm not sure it's still in existence, called the
12 Committee For Children, Youth and Families.

13 Then finally I provided testimony to the -- a
14 number of active legislative committees where I have
15 described previously are interim bodies that are in
16 operation during our biennial period which is between
17 legislative sessions. Legislative sessions occurring
18 in the odd years from January to May approximately.

19 Of course, I have provided testimony in front
20 of a number of legislative bodies during the
21 legislative sessions in 2001, 2003 and 2005.

22 **Q** What legislative bodies have you provided

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1 **testimony while legislature of was in session?**

2 A Joint Sub Committees on Finance and Ways and
3 Means. The Joint Committee on Health and Human
4 Services. Individual committees for the Senate and
5 the Assembly on Health and Human Services.

6 I believe that's the primary bodies where I
7 delivered testimony.

8 Q With regard to your testimony before these
9 committees, is there a particular staff person or
10 staff people that you deal with on each committee? Or
11 do you deal mostly directly with legislators? How
12 does that work?

13 A I deal with both.

14 On occasion the staff will be asked to work
15 with me prior to my presentations and have specific
16 questions in mind which they would like me to address.

17 On occasions I get requests from individual
18 legislators to present specific information. On
19 occasion probably most often they'll just ask
20 questions as they come up and I answer to the best of
21 my ability. Sort of like here.

22 Q With regard to the Interim Committee on

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1 Health Care is there a particular staff person on that
2 committee that you have dealt with with regard to your
3 testimony relating to reimbursement of prescription
4 drugs?

5 A There have been several. Particularly an
6 analyst named Marsheila Lyons.

7 Q Is there anyone else on that committee that
8 comes to mind?

9 A Not offhand.

10 Q How about the Interim Committee on Persons
11 With Disabilities? Is there a staff person or staff
12 people there who you have dealt with on the
13 prescription drug issue?

14 A No.

15 Actually, I dealt more directly with the --
16 I'm sure they had a staff person. But my dealings
17 were with the legislators.

18 Q Is there a particular legislator who you
19 dealt with that on Committee?

20 A I can't remember the chair. I think it was
21 Dina Titus. Senator Dina Titus.

22 Q How about the Interim Finance Committee? Is

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1 there a staff person on that Committee you have dealt
2 with on prescription drug issues?

3 A Steve Abba.

4 Q A-b-b-a?

5 A Yeah.

6 Q Anyone's else?

7 A No.

8 Q The Interim Standing Committee For Children
9 and Families, is there a particular person you dealt
10 with on prescription issues?

11 A No.

12 Q Is there a legislator on that Committee with
13 a particular interest in prescription drug interest --

14 A Not to my knowledge.

15 Q -- issues?

16 Turning to the committees during the
17 legislative session, is there a staff person on the
18 Joint Sub Committee on Finance and Ways and Means that
19 you dealt with in connection with testimony relating
20 to prescription drug issues?

21 A Steve Abba.

22 Q Anyone else?

1 A No.

2 Q How about the Joint Committee on Health and
3 Human Services?

4 A Marshelia Lyons.

5 Q Anyone else?

6 A Not that I can recall.

7 Q Would Marshelia Lyons also be your contact on
8 the individual committees on Health and Human
9 Services?

10 A I can't recall who the staff people were
11 during the legislative session. I'm sorry.

12 Q In general are there particular legislators
13 who have a real active involvement on this
14 prescription drug reimbursement issue that you can
15 identify?

16 A Can you kind of tell me, give me, some
17 context? A number of them have been involved. But
18 how do you mean? To what extent?

19 Q I guess I'm looking for -- I understand to
20 some extent all legislators may be involved in voting
21 on an issue --

22 A Right.

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1 Q -- or are aware of it. I don't know if there
2 are one or several legislators who really made the
3 prescription drug reimbursement issue a real issue for
4 them so that they contact you more than normal or
5 you're in communication with them more than you would
6 be with your ordinary legislators.

7 A I think one was Senator Ray Rawson. He's no
8 longer in the legislature. The other is Assemblywoman
9 Ellen Koivisto.

10 Q Could you spell that?

11 A K-o-i-v-i-s-t-o, I believe.

12 And then finally in terms of active
13 involvement, Senator Barbara Cegavske. Don't ask me
14 how to spell her name. I think it's something like
15 C-e-g-a-v-s-k-e, I think.

16 Q How about with the Governor's office? Do you
17 ever prepare presentations for the Governor or staff
18 in the Governors' office?

19 A Yes.

20 Q Have you ever prepared presentations on
21 prescription drug price issues for either the Governor
22 or some of the Governor's staff?

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1 A Not specifically pricing issues.

2 Q Have you prepared any presentations that
3 relate in some way to prescription drug reimbursement
4 issues?

5 A Yes.

6 Q On how many occasions have you prepared such
7 presentations?

8 A I can't recall the exact number. Two or
9 three perhaps.

10 Q Are there people on the Governor's staff that
11 have served as principal contact with you on the
12 prescription drug reimbursement issue?

13 A Yes.

14 Primarily my contact is through the
15 Director's office. He's direct report to the Governor
16 while I'm not.

17 So the people that we individual -- we
18 normally met with a gentleman named Michael Hillerby
19 and his predecessor Mary Bell Batcher, B-a-t-c-h-e-r.

20 Both -- she was and he is the Chief of Staff
21 for the Governor.

22 Q Has the Governor ever sat in on any of these

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1 **presentations?**

2 A I don't recall. I don't believe so. I think
3 he probably walked in and walked out.

4 MR. DOVE: Off the record.

5 (Discussion off the record.)

6 MR. DOVE: Let's go back on the record.

7 BY MR. DOVE:

8 Q Mr. Duarte, did you meet with your attorneys
9 in preparing for today's deposition?

10 A Yes, I did.

11 Q When did you meet?

12 A Yesterday.

13 Q Who was present at that meeting?

14 A Mr. Terry and Miss Breckenridge.

15 Q For how long did you meet?

16 A Hour and a half.

17 Q Did you look at any documents in preparation
18 for your deposition?

19 A Yes, I did.

20 Q What documents did you review?

21 A A briefing memo from Miss Breckenridge to me
22 and some handouts that were associated with it.

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1 A No, I don't.

2 Q What's your standard practice with regard to
3 documents that you get at seminars?

4 A I generally send them to staff or people who
5 may find them of interest and I may have some around
6 the office. But I don't routinely file them in a
7 seminar -- by seminar fashion. So there may be some
8 in the office.

9 I generally try to give them to staff as a
10 way of providing them with information and training on
11 current issues.

12 Q What professional organizations do you
13 participate in, if any?

14 A National Association of State Medicaid
15 Directors.

16 Q Any others?

17 A I'm on a number of boards. But they're not
18 professional associations specifically.

19 Q Do any of the boards you serve on relate in
20 any way to prescription drug reimbursement?

21 A Yes.

22 Q Which boards?

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1 A The Public Employee Benefit Fund Board.

2 Q What is your role in the Public Employee
3 Benefit Fund Board?

4 A I am a board member.

5 Q How does your role as a board member relate
6 to prescription drug reimbursement?

7 A We occasionally deal with issues related to
8 the pharmacy benefit provided to state and local
9 employees who participate in the Public Employee
10 Benefit Plan.

11 Q Who pays for the pharmacy benefit for Nevada
12 State employees?

13 A The State and the employees themselves.

14 Q Does the State contract with a third party
15 administrator or --

16 A Yes.

17 Q What is that third party administrator?

18 A Catalyst RX.

19 Q I take it Catalyst RX is a third party
20 administrator that deals with the prescription drug
21 pharmacy benefit; is that correct?

22 A Yes.

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1 Q Is there a third party administrator that the
2 State is contracted with to deal with physician
3 administered drugs and the medical benefit?

4 A Yes. Benefit Planners. They're the claims
5 administrator.

6 Q Do you know if prescription drugs that the
7 State reimburses for in connection with the Public
8 Employee Benefit Fund, whether that reimbursement is
9 based on AWP?

10 A I do not know.

11 Q Who would know the answer to that?

12 A Woody Thorn who is the Executive Officer for
13 the Public Employee Benefit Plan.

14 Q In addition to the Public Employee Benefit
15 Fund do you serve on any other boards that involve in
16 any way issues relating to prescription drug
17 reimbursement?

18 A No.

19 Q In your position as board member of the
20 Public Employee Benefit Fund have you ever had
21 discussions with Woody Thorn about AWP?

22 A Not to my recollection.

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1 **Q** Do you know if Woody Thorn is aware of the
2 lawsuit that the State of Nevada has filed that is the
3 subject of this deposition?

4 A I don't know.

5 If I could go back, Woody and I have had
6 discussions about joint purchasing activities between
7 our different programs.

8 I don't recall whether we specifically
9 touched on AWP. It's not an area that we have to deal
10 with when we work through a pharmacy benefit manager.

11 **Q** When you say joint purchasing activities,
12 what do you mean by that?

13 A Looking at the potential of similar benefit
14 administrator for a Medicaid pharmacy benefit and
15 public employee board benefit.

16 **Q** So is there some exchange of information
17 between your Department, Division of Health Care
18 Financing and Policy, and the Public Employee Benefit
19 Fund?

20 A No. Not formally.

21 **Q** But informally?

22 A This occurred at the Governor's Drug Summit

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1 in Las Vegas this summer where we had some discussion
2 about joint purchasing activity.

3 Q You mentioned the Governor's Drug Summit in
4 Las Vegas.

5 What was that?

6 A The Governor in the last State of the State
7 identified the need for the State to look at ways of
8 providing prescription drugs to its residents more
9 cost effectively and asked a number of policy makers
10 to get together and talk about initiatives that might
11 achieve that goal.

12 I was just one of the participants.

13 Q Were there any handouts or other documents
14 either distributed or generated by the Governor's Drug
15 Summit?

16 A Yes.

17 Q I would certainly ask any documents from the
18 Governor's Drug Summit that relate to prescription
19 drug reimbursement issues or AWP or any of the other
20 issues that we have identified in our document
21 requests, that those documents be produced to us.

22 Who all participated in the Governor's drug

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1 summit?

2 A It's a list of probably close to a hundred
3 people. I couldn't tell you who participated
4 entirely.

5 Q Do you know if Mr. Terry participated?

6 A No. He did not. Unless he snuck in. I
7 don't think so.

8 MR. TERRY: I'm not under oath.

9 BY MR. DOVE:

10 Q We certainly would ask if a list of
11 participants at the Governor's Drug Summit exists it
12 be provided to us.

13 Do you know whether this lawsuit was
14 discussed at the Governor's Drug Summit?

15 A I didn't hear it discussed.

16 Q Was Woody Thorn present at the Governor's
17 Drug Summit?

18 A Yes.

19 Q Other than the Public Employee Benefit Fund
20 and Nevada Medicaid are there any other State agencies
21 or State affiliated groups that are involved in either
22 the purchase or reimbursement of prescription drugs?

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1 A Yes.

2 Q What are those entities?

3 A The Director of the Department of Health and
4 Human Services oversees a State pharmacy assistance
5 program called Senior RX.

6 Additionally, the number of other agencies
7 under the Department of Health and Human Services
8 purchase drugs for their beneficiaries. I don't
9 believe they reimburse. Well, they may actually.

10 Q So who -- which entities purchase drugs on
11 behalf of their beneficiaries?

12 A The Division of Mental Health and
13 Developmental Services which is the State Mental
14 Health Agency or authority for adults and for adults
15 and children in rural areas.

16 They have responsibility for providing care,
17 mental health treatment, in a variety of settings
18 including facilities and they do provide, I believe,
19 both outpatient and inpatient prescription drugs for
20 their patients.

21 Q It's your understanding that they purchase
22 those drugs themselves?

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1 A Yes, they do.

2 Through a purchasing consortium.

3 Q In addition to the Division of Mental Health
4 and Developmental Services are there any other state
5 agencies or state affiliated groups that either
6 purchase prescription drugs or reimburse for
7 prescription drugs?

8 A The Division of Child and Family Services
9 operates a number of facilities. Actually, I think
10 one inpatient facility and one treatment facility,
11 where I assume inpatient pharmaceuticals are provided.
12 I'm not totally certain with that. I don't know how
13 they actually purchase those.

14 The Health Division administers a number of
15 clinics for children who are developmentally delayed
16 or severely disabled.

17 I don't know whether they actually provide
18 pharmaceutical prescription drugs to those patients in
19 those clinical settings. They may. I do not know for
20 sure.

21 Also, the Health Division is responsible for
22 the ADAP program, the Aids Drugs Assistance Program,

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1 and so they actually purchase and reimburse for aids-
2 related treatment. Drugs for aids-related treatment.

3 Q Would representatives from each of these
4 entities have been present at the Governor's Drug
5 Summit in Las Vegas?

6 A With the exception of Child and Family
7 Services there were representatives from Mental Health
8 as well as from the Health Division. Also from the
9 Director's office representing the State Pharmacy
10 Assistance Program.

11 Q Didn't mean to cut short your list.

12 Are there any other entities that are either
13 State agencies or affiliated in some way with the
14 State that either purchase or reimburse for
15 prescription drugs?

16 A Not to my knowledge.

17 Q Is there a Nevada bureau of prisons or
18 something?

19 A Yeah.

20 Q Would they --

21 A I'm sure they do. Yeah. I'm just not
22 familiar with them. They run their medical programs.

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1 **Q How about the provision of prescription drugs**
2 **for Nevada's Native American population? How does**
3 **that work?**

4 **A I believe they do that directly. I'm not**
5 **involved with the purchase or reimbursement of their**
6 **drugs. I do provide reimbursement, pass through**
7 **reimbursement. Whether it included any reimbursement**
8 **for prescription drugs, I'm not sure.**

9 **Q Does the Public Employee Benefit Fund that**
10 **you mentioned, does that cover essentially all Nevada**
11 **State public employees, teachers, other government**
12 **workers or are there different funds for different**
13 **groups?**

14 **A There are a few excluded groups or groups**
15 **that are not affiliated. But for the most part they**
16 **cover Nevada's public employees. The majority of the**
17 **employers, the State and local county agencies,**
18 **participate in PED.**

19 **Q You mentioned the Governor's Drug Summit in**
20 **Las Vegas and the presence of representatives from at**
21 **least some of these entities at that Summit.**

22 **Are there other opportunities where**

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1 representatives from Nevada Medicaid and some of these
2 other entities get together to discuss prescription
3 drug issues?

4 A Not specifically.

5 There are opportunities for the Division
6 administrators to get together on at least a monthly
7 basis. Not specifically to discuss prescription drug
8 issues.

9 Q What are those opportunities that are
10 available for the directors to get together?

11 A We have a monthly administrators meeting with
12 the Director to talk about the Department and Agency
13 specific issues.

14 There is, of course, I forgot to mention, I'm
15 sorry, where a number of us are involved jointly in
16 preparing for implementation of the Medicare
17 Prescription Drug Plan Part D and so we have a number
18 of conference calls and planning meetings associated
19 with that. None of which is really related to
20 purchasing but more of how we transition people that
21 we are responsible for to the Medicare Program.

22 Q Do you know where Catalyst RX is based?

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1 A Yes.

2 Q I would like to go back to some of those
3 agencies and ask you a few more questions about that.

4 You mentioned the State Pharmacy Assistance
5 Program.

6 Do you recall that?

7 A Yes.

8 Q Who is the head of the State Pharmacy
9 Assistance Program?

10 A Mike Wilden is responsible overall for it.
11 But the manager for the State Pharmacy Assistance
12 Program is Laurie Olson, L-a-u-r-i-e.

13 Q Is she the person who would be most
14 responsible for the purchase and/or reimbursement of
15 prescription drugs for that program?

16 A Yes.

17 Q Is there anyone else at that program who
18 would be knowledgeable regarding the purchase or
19 reimbursement of prescription drugs?

20 A Besides Laurie perhaps their vendor, Catalyst
21 RX.

22 Q Have you ever spoken with Laurie regarding

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1 the purchase or reimbursement of prescription drugs?

2 A Yes.

3 Q What did you discuss?

4 A A variety of issues related to primarily to
5 Medicare Part D and its implementation. Its enactment
6 and implementation.

7 Q Is there any other issue you can recall
8 discussing with her relating to prescription drugs?

9 A In general we talk -- we've had numerous
10 discussions about Medicaid policy in support of our
11 dual eligibles as they move toward the Medicare
12 benefit effective January 1st. How we can continue to
13 provide them with certain excluded drugs including
14 barbiturates, benzodiazapene, over the counter
15 medications and to cover co-payments for those
16 individuals who participate in Medicare Part D and
17 currently do not pay co-payments.

18 Q What's the organizational structure of the
19 State Pharmacy Assistance Program? By that I don't
20 mean ever single position but just more generally who
21 do they report to within the larger State government?

22 A They are a part of the Director's office.

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1 And I don't know who Laurie directly reports to. It
2 may be Michael Wilden. It may also be Mary Liveratti,
3 the Deputy Director of Health and Human Resources.

4 Q Is Mary Liveratti related to John Liveratti?

5 A Yes.

6 Q Husband and wife?

7 A Yes.

8 Q Who is the Division -- who is the head of the
9 Division of Mental Health and Developmental Services?

10 A The Administrator is Carlos Brandenberg,
11 B-r-a-n-d-e-n-b-e-r-g.

12 Q Is he the person who would have the most
13 knowledge regarding the purchase or reimbursement of
14 prescription drugs by the Division of Mental Health
15 and Developmental Services?

16 A I believe the individual who would probably
17 have the most knowledge is Dr. Emanuel Ebo, E-b-o. He
18 is a doctor of pharmacy. What's the designation?
19 Capital R Ph.D.

20 Q Other than Dr. Ebo is there anyone else at
21 the Division of Mental Health and Developmental
22 Services who you think would be knowledgeable about

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1 the purchase or reimbursement of prescription drugs?

2 A Their medical director. I can't remember his
3 name. It will come to me. I'm sorry.

4 Q But his position is medical director?

5 A Yes.

6 Q Have you ever spoken with either Mr.
7 Brandenberg --

8 A Actually, Dr. Brandenberg.

9 Q Dr. Brandenberg or Dr. Ebo regarding, or the
10 medical director regarding, purchase or reimbursement
11 of prescription drugs?

12 A More specifically I have spoken with Dr.
13 Brandenberg and Dr. Ebo about that.

14 Q What sort of issues have you discussed with
15 them?

16 A Utilization management procedures related to
17 the issuance of mental health drugs including anti-
18 convulsives, atypical and typical anti-psychotic
19 medications and anti-depressants.

20 Q What department does Division of Mental
21 Health and Developmental Services fall under?

22 A Department of Health and Human Services.

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1 **Q Again, Michael Wilden would be --**

2 A Director.

3 **Q -- responsible for overseeing that Division?**

4 A Yes.

5 They're organized slightly different in that
6 Dr. Brandenburg is appointed by the Governor whereas
7 other administrators in the department are appointed
8 by the Director. There's a little bit of different
9 line of authority there, at least in terms of
10 appointment.

11 **Q Who is the head of the Division of Child and**
12 **Family Services?**

13 A Currently they don't have an administrator.
14 Their Deputy Administrator is Diane Comeaux,
15 C-o-m-e-a-u-x.

16 **Q Would she be the person most knowledgeable**
17 **regarding the purchase or reimbursement of**
18 **prescription drugs by that Division?**

19 A I don't believe so.

20 **Q Who would be the most knowledgeable person?**

21 A Actually, I do not know. Perhaps you might
22 want to put down Patty Merrifield. P-a-t-t-y

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1 M-e-r-r-i-f-i-e-l-d.

2 Q Have you ever spoken with anyone at the
3 Division of Child and Family Services regarding
4 prescription drug issues?

5 A Not that I recall.

6 Q The Division of Child and Family Services,
7 does it also fall under the Department of Health and
8 Human Services?

9 A Yes.

10 Q Do you know who the head of Nevada Bureau of
11 Prisons is?

12 A No, I do not.

13 Q Do you know anyone at the Nevada Bureau of
14 Prisons who would be knowledgeable regarding the
15 purchase or reimbursement of prescription drugs?

16 A You may want to -- I don't know the
17 individual's name but their Medical Director I'm
18 certain might know something about that or perhaps
19 their fiscal officer, their administrative services
20 officer. I don't know their names.

21 Q We discussed the Public Employees Benefit
22 Fund and Woody Thorn.

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1 I believe you testified Woody Thorn would be
2 the person at that Fund most knowledgeable regarding
3 the purchase or reimbursement of prescription drugs;
4 is that correct?

5 A Yes.

6 Q Is there anyone else at the Fund who would be
7 knowledgeable regarding the purchase or reimbursement
8 of prescription drugs?

9 A Perhaps his Deputy, Leslie Johnstone,
10 J-o-h-n-s-t-o-n-e.

11 Q Anyone else?

12 A Jim Wells, their Fiscal Officer.

13 Q Are there any other agencies or State
14 affiliated organizations or entities that are involved
15 in the purchase or reimbursement of prescription drugs
16 to your knowledge?

17 A Yes.

18 I previously testified the Health Division
19 administers the ADAP Program for the State of Nevada.

20 Q Who is the head of that program?

21 A I don't know the name of the individual in
22 charge of ADAP. But the administrator and former I

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1 think ADAP Chief would probably know. The
2 Administrator is a gentlemen named Alex Haartz,
3 H-a-a-r-t-z. The Deputy Administrator is a gentleman
4 named Richard Whitley, W-h-i-t-l-e-y.

5 Q Would they be the persons most knowledgeable
6 regarding the purchase or reimbursement of
7 prescription drugs by that program?

8 A Yes.

9 Q Have you ever had discussions with either
10 those two individuals regarding the purchase or
11 reimbursement of prescription drugs?

12 A Yes.

13 Q What did you discuss?

14 A I discussed some methodologies for
15 administering the ADAP program in a manner which might
16 assist them with some cash flow issues.

17 Q Any other topics you discussed with them
18 regarding -- relating to prescription drug
19 reimbursement?

20 A Use of pharmacy point of sales systems for
21 administration of 340 B price drugs.

22 Q Anything else?

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1 A That's about it.

2 Q You said the Health Division administers the
3 ADAP program.

4 Who oversees the Health Division?

5 A Health Division is administered by Alex
6 Haartz.

7 Q What department does the Health Division fall
8 under?

9 A Health and Human Services.

10 Q You also talked about certain state mental
11 health hospitals that purchase prescription drugs.

12 Would that all fall under the Division of
13 Mental Health and Developmental Services?

14 A Or the Division of Child and Family Services.

15 Q But both would still be under the larger
16 structure of the Department of Health and Human
17 Services?

18 A That's correct.

19 Q Are there any other state entities you can
20 think of that either purchase or reimburse for
21 prescription drugs?

22 A Not to my knowledge.

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1 the explanation for Mr. Netzer's review?

2 A Program staff would have to provide
3 information to John Liveratti in response to any
4 questions related to State Plan Amendments.

5 I'm not sure which specific program staffer
6 addressed those specific concerns.

7 Q Do you know if the State provided a similar
8 explanation with respect to the State Plan Amendment
9 reducing the prescription drug reimbursement rate to
10 AWP minus 15 percent?

11 A I don't know. I'm not sure if we were asked
12 the question.

13 Q Just so I understand it, you're not always
14 required to provide an explanation but you are always
15 required to provide assurances that the access to care
16 standards are met?

17 A Yes. That is correct.

18 And I assume because the State Plan Amendment
19 reducing the discount of AWP was approved that
20 whatever we had done was sufficient for CFS to approve
21 it.

22 MR. DOVE: I would like to mark as Exhibit

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1 Duarte 008 a document entitled Minutes from the
2 Department of Human Resources Division of Health Care
3 Financing and Policy, Meeting For Public Comment on
4 Review for Nevada Medicaid State Plan Amendment 03-031,
5 dated May 7, 2003, bearing the bates label NV 04061 to
6 NV 04069.

7 (Exhibit Duarte 008 marked for identification.)

8 BY MR. DOVE:

9 Q What is this document, Mr. Duarte, if you
10 know?

11 A It looks like the minutes from our public
12 comment period related to this specific State Plan
13 Amendment.

14 Q You attended that particular meeting,
15 correct?

16 A Yes.

17 Q If I could direct your attention to the
18 fourth paragraph down on the first page where it says
19 that "Mr. Duarte indicated comments from this meeting
20 will be reviewed with the DHR Director Mike Wilden, as
21 well as the Governor and the governor's staff, for
22 impact on access to services and the state budget," do

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1 **you see that?**

2 A Yes.

3 Q Do you recall reviewing the comments from
4 **this meeting with Mr. Wilden?**

5 A Yes.

6 Q How did you go about reviewing the comments
7 **with Mr. Wilden?**

8 A I went over the testimony and the context of
9 the testimony that was provided by attendees and
10 others that sent in their public testimony. And at
11 the time I met with Mr. Wilden and Deputy Chief of
12 Staff at the time Michael Hillerby. And I believe --
13 I'm not sure if the Governor was involved in this
14 discussion.

15 I had briefed them on concerns expressed by
16 specialist physicians that were treating children
17 regarding the changes in our reimbursed for physician
18 services and potential it may have on access to care.

19 Subsequently I was directed by the Governor
20 to increase reimbursements soon after this meeting.
21 Or not implement the changes and enact a reimbursement
22 policy that was consistent with current level of

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1 reimbursement.

2 Q When you reviewed these comments with
3 Mr. Wilden and the Governor's staff you did that in a
4 face-to-face meeting with them?

5 A Yes.

6 Q Is that typically the way you review comments
7 from these meetings on State Plan Amendments?

8 A No. It is not.

9 We knew this was going to be controversial as
10 it was significant reduction in reimbursement for
11 certain kinds of specialists, particularly those in
12 the surgical and radiologic arena, and wanted to make
13 sure that the Governor understood the impact of the
14 rate changes we were implementing.

15 After the discussion and review of testimony,
16 and actually I should say we already saw providers
17 dropping out of the program as a result of this
18 change, that the decision was made about six or eight
19 weeks later to revise the State Plan once again and
20 increase the reimbursement for these specialists who
21 were treating children.

22 I think there was a separate State Plan

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1 Amendment or we withdrew this one and submitted
2 another one. I can't recall the process.

3 Q Do you recall if there was a similar meeting
4 for public comment on the change in the drug
5 reimbursement rate from AWP minus 10 percent to AWP
6 minus 15 percent?

7 A Not with the Governor's staff. There was a
8 public hearing.

9 Q After that public hearing did you meet with
10 anyone with regard to the result of that public
11 hearing?

12 A My recollection, and I have to go back to the
13 records, my recollection was we actually met with the
14 Director and representative, I think I referred to
15 this meeting already in testimony, representatives of
16 Walgreens, the National Association of Chain Drug
17 Stores, the Nevada Retailers Association, prior to our
18 implementation of the revision in the discount policy
19 off of average wholesale price.

20 I can't remember -- I believe it was prior to
21 but I'm not certain.

22 Q Do you recall meeting -- you said you met

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1 the approval of the State Plan change.

2 Q You testified that once it was agreed that we
3 would go ahead and make the change you develop draft
4 language and proceed on these various formal steps
5 towards enactment.

6 I want to focus on the first part. Once it
7 was agreed you would go ahead and make the change, who
8 was involved in that initial decision to make the
9 change? Is it just your decision or do you have a
10 small group of staff who you get together and agree is
11 this the right thing to do? How is that initial
12 decision made?

13 A There's no formal process for this.
14 Generally I get together with staff who have done the
15 analysis. I go through the analysis with them to make
16 sure I understand its implications and impacts and
17 then direct them if appropriate to continue with the
18 full public process and State Plan Amendment.

19 Q When, if ever, does the political process
20 enter into this? Is there a time when you consult
21 with your connections in the legislature or in the
22 executive branch regarding whether they have any

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1 issues with this proposed change? Is that done at the
2 Director of Human Resources level? When does that
3 happen?

4 MS. BRECKENRIDGE: To clarify, are you
5 talking about the legislative process versus political
6 process?

7 I'm going to object to the political extent
8 it's immaterial, implies a partisan nature.

9 MR. DOVE: I mean more than legislature. I
10 also mean executive branch basically assuming at least
11 on some of these State Plan Amendments there are
12 considerations relating to whether this proposed
13 change would be acceptable by legislators and the
14 Governor.

15 THE WITNESS: Yes.

16 BY MR. DOVE:

17 Q When does that enter into the process?

18 A Weigh that as part of deciding whether or not
19 to proceed with the State Plan Amendment and then
20 subsequently will inform the Director prior to
21 engaging in the full public process and submittal to
22 CFS if I believe it's necessary that he and/or the

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1 Governor's office need to be involved.

2 Keep in mind that the executive branch is
3 separate from the legislative and, of course, has
4 authority to administer the program as it needs to
5 within its budget authority.

6 And while -- it's not necessary for us to
7 take these kinds of programs to the legislature for
8 approval during the interim, the interim between
9 legislative sessions, unless we believe that there's
10 something that they need to get involved with.

11 In this case we didn't believe this was
12 something they needed to be involved with. We did
13 report this in 2003 session as an administrative
14 action to save money related to the pharmacy program.
15 As such we did report it to them. But really was the
16 executive branch initiative. The Director's office
17 was involved. I can't say whether or not he informed
18 the Governor's office. I assume so.

19 Q When you say you reported this in 2003, what
20 does that mean? You testified at the legislature
21 about it?

22 A Yes.

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1 I believe we provided that to you in
2 documents where we presented information to the joint
3 money committees of the legislature regarding our
4 overall pharmacy initiatives.

5 Q Are you ever given directives from your
6 supervisor or for people in the executive branch who,
7 at a more senior level, to the effect of we need you
8 to do what you can to reduce prescription drug costs
9 as an example? Is that the sort of directive you
10 might get from higher levels of the executive branch?

11 MS. BRECKENRIDGE: I'm going to allow him to
12 answer but we're going kind of far afield from the
13 Deposition Notice.

14 THE WITNESS: Specifically to the request to
15 reduce prescription drug expenditures the answer is
16 no, I did not receive a specific order from my boss
17 the Director, Michael Wilden, or his predecessor or
18 the Governor's office to do so.

19 Yes, we have been directed particularly in
20 2002, to reduce overall expenditures by approximately
21 three percent in response to a shortfall of State
22 revenues associated with the impact on the economy of

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1 911 and increase in our Medicaid case load which
2 resulted in us moving toward exceeding our budget
3 authority.

4 BY MR. DOVE:

5 Q So was this decrease in the reimbursement
6 rate one of several measures you enacted in an attempt
7 to address that three percent budget consideration?

8 A It wasn't specifically directed at that.

9 We had intentions of increasing the discount
10 already. My recollection was that was already in the
11 works prior to the request by the Governor's office
12 for a three percent reduction.

13 Q If you turn to page NV 0018, please.

14 What's the Legislature Counsel Bureau?

15 A Legislature Counsel Bureau are staff to the
16 Nevada State Legislature.

17 Q They would have received a copy of this State
18 Plan Amendment?

19 A I assume so. They routinely receive copies
20 of State Plan Amendments.

21 Q If you could turn with me to NV 00191.

22 The first paragraph of that first full

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1 paragraph on this page states that "The next step in
2 restructuring the pharmacy program is a reduction in
3 the pharmacy reimbursement from average wholesale
4 price minus 10 percent to AWP minus 13 to 15 percent.
5 Our staff is scheduled to negotiate the reimbursement
6 with the National Association of Chain Drug Stores and
7 retail representatives at the end of May. The
8 reduction target date is July 1, 2002."

9 Do you see that?

10 A Yes.

11 Q It says in there --

12 Let me turn back.

13 This appears to be a draft email from you to
14 Michael Wilden and Steve Abba of the Legislative
15 Counsel Bureau.

16 At the time this email was drafted I take it
17 you had not yet decided whether the final discount
18 would be AWP minus 13 or AWP minus 15 percent; is that
19 correct?

20 A That's correct.

21 Q How did you arrive at AWP minus 15 percent as
22 opposed to AWP minus 13 percent?